

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

PETER ERIKSEN, a single man;  
and MARY ERIKSEN, a single  
woman,

Plaintiffs,

v.

RONAL SERPAS, Washington  
State Patrol Chief; KITTITAS  
COUNTY, a Municipal  
Corporation; and CITY OF CLE  
ELUM, a Municipal  
Corporation, et. al.,

Defendants.

NO. CV-09-82-EFS

**ORDER GRANTING DEFENDANTS'  
MOTIONS TO DISMISS**

In March 2009, Plaintiffs Peter and Mary Eriksen sued Defendants for various constitutional violations arising from a June 24, 2002 traffic stop near Cle Elum, Washington. Defendants insist that Plaintiffs' claims are barred not only by Washington's three-year statute of limitations, but also by the doctrines of res judicata, collateral estoppel, and law of the case. (Ct. Recs. [20](#), [24](#), & [27](#).) After review,<sup>1</sup> the Court agrees and finds that Washington's three-year statute of limitations bars Plaintiffs' action for the reasons set forth below.

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<sup>1</sup>The Court finds this matter suitable for disposition without oral argument. See LR 7.1(h)(3).

## I. Background

On June 24, 2002, Defendants Paul Woodside and David Snyder, both Washington State Troopers, pulled over Plaintiffs near Cle Elum for allegedly failing to signal. After a brief exchange, Defendants purportedly sprayed Plaintiff Peter Eriksen with pepper spray without provocation. A struggle ensued. Backup was called. Before being arrested, Plaintiff Peter Eriksen alleges that Defendants had 1) discharged two (2) full cans of pepper spray in his face, 2) pointed a loaded weapon at his head, 3) shattered his driver-side window with a night stick, 4) verbally threatened him, and 5) slammed him to the pavement, resulting in broken ribs, neck injuries, and abrasions to his face, knee, and arms.

Plaintiffs initially filed suit against Defendants for various alleged state and constitutional violations on June 24, 2005, in the Eastern District of Washington. See *Eriksen, et. al. v. Wash. State Patrol, et. al.*, CV-05-195-LRS.<sup>2</sup> After review, the Honorable Lonny R. Suko dismissed Plaintiffs' action *with prejudice* based on 1) insufficient service under Federal Rule of Civil Procedure 4(m), 2) expiration of the statute of limitations, and 3) Eleventh Amendment immunity (with respect to the state defendants). The Ninth Circuit affirmed the dismissal in part, but vacated the district court's decision regarding 1) the statute

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<sup>2</sup>A court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.'" *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007).

1 of limitations' expiration<sup>3</sup> and 2) dismissing Plaintiffs' 42 U.S.C.  
2 § 1983 claims against select defendants *with* prejudice. *Eriksen*, 308  
3 Fed. Appx. at 200. In February 2009, consistent with the Ninth Circuit's  
4 mandate, the district court amended its prior order and dismissed  
5 Plaintiffs' section 1983 claims against select defendants *without*  
6 prejudice. (Ct. Rec. 39, Ex. D.)

7 Plaintiffs took no further action in *Eriksen v. Washington State*  
8 *Patrol*, CV-05-195-LRS; instead, they filed the above-captioned matter on  
9 March 16, 2009. In lieu of answering Plaintiffs' Complaint (Ct. Rec. 5),  
10 Defendants filed the Federal Rule of Civil Procedure 12(b) dismissal  
11 motions now before the Court. (Ct. Recs. 20, 24, & 27.)<sup>4</sup>

## 12 II. Discussion

### 13 A. Rule 12(b)(6) Standard

14 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency  
15 of the pleadings. *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001).  
16 A complaint may be dismissed for failure to state a claim under Rule  
17 12(b)(6) where the factual allegations do not raise the right to relief

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19 <sup>3</sup>Specifically, the Ninth Circuit held that Plaintiffs did not run  
20 afoul of Washington's three-year statute of limitations because they  
21 constructively filed their complaint on June 24, 2005 - the exact three-  
22 year mark - by delivering it to the clerk. *Eriksen v. Wash. State*  
23 *Patrol*, 308 Fed. Appx. 199, 200 (9th Cir. 2009).

24 <sup>4</sup>There are three (3) dismissal motions because Defendants are  
25 separately represented. The distinction is irrelevant, however, because  
26 the requested relief in each motion is identical.

1 above the speculative level. *Bell Atl. v. Twombly*, 550 U.S. 544, 555  
2 (2007); *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950-51 (2009). Conversely,  
3 a complaint may not be dismissed for failure to state a claim where the  
4 allegations plausibly show that the pleader is entitled to relief. *Id.*  
5 In ruling on a motion pursuant to Rule 12(b)(6), a court must construe  
6 the pleadings in the light most favorable to the plaintiff, and must  
7 accept all material factual allegations in the complaint, as well as any  
8 reasonable inferences drawn therefrom. *Broam v. Bogan*, 320 F.3d 1023,  
9 1028 (9th Cir. 2003); see also *Chang v. Chen*, 80 F.3d 1293 (9th Cir.  
10 1996). Motions to dismiss are viewed with disfavor and are rarely  
11 granted. *Hall v. City of Santa Barbara*, 833 F.2d 1270 (9th Cir. 1986).

## 12 **B. Statute of Limitations**

13 Defendants argue that Plaintiffs' claims are barred by Washington's  
14 three-year statute of limitations. (Ct. Rec. 21 at 3.) Plaintiffs  
15 insists that Washington's statute of limitations is inapplicable because  
16 they timely filed the above-captioned matter within ten (10) "court days"  
17 of Judge Suko's Amended Order. (Ct. Rec. 39 at 5.)<sup>5</sup>

18 A Rule 12(b)(6) dismissal motion based on a statute of limitations  
19 expiration is properly granted only when "it appears beyond doubt that  
20 the plaintiff can prove no set of facts that would establish the  
21 timeliness of the claim." *Supermail Cargo, Inc. v. United States*, 68  
22 F.3d 1204, 1206 (9th Cir. 1995); see also *Jablon v. Dean Witter & Co.*,

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24 <sup>5</sup>The Court notes in passing that, in fact, eleven (11) "court days"  
25 passed between the February 27, 2009 Judgment in CV-05-195-LRS and the  
26 March 16, 2009 Complaint here.

1 614 F.2d 677, 682 (9th Cir. 1980). When calculating the applicable  
2 statute of limitations period for a section 1983 action, a district court  
3 uses the applicable state's statute of limitations period for an  
4 analogous cause of action - in Washington, it is three (3) years. *Bagley*  
5 *v. CMC Real Estate Corp.*, 923 F.2d 758, 760 (9th Cir. 1991) (citing RCW  
6 4.16.080(2)). The three-year statute of limitations period begins to run  
7 when the plaintiff "knows or has reason to know of the injury which is  
8 the basis of the action." *Id.*

9 Here, Plaintiffs' claims are barred by Washington's three-year  
10 statute of limitations. At the earliest, Plaintiffs knew of their  
11 injuries in June of 2002 when the allegedly improper traffic stop  
12 occurred; at the latest, Plaintiffs knew of their injuries in June of  
13 2005 when they filed their first lawsuit in the Eastern District of  
14 Washington based on the traffic stop. Either way, well over three (3)  
15 years passed before Plaintiffs initiated this action in March 2009.

16 Plaintiffs insist that the Ninth Circuit's recent mandate in *Eriksen*  
17 *v. Washington State Patrol*, CV-05-195-LRS, directing the district court  
18 to dismiss Plaintiffs' section 1983 claims against select defendants  
19 without prejudice somehow tolled the statute of limitations. Plaintiffs  
20 are mistaken. "'Without prejudice' does not mean 'without consequence.'  
21 If [a] case is dismissed and filed anew, the fresh suit must satisfy the  
22 statute of limitations." *Powell v. Starwalt*, 866 F.2d 964, 966 (7th Cir.  
23 1989); *Gartin v. Par Pharmaceutical Companies, Inc.*, 561 F. Supp.2d 670,  
24 682 (E.D. Tex. 2007) ("A Rule 4(m) dismissal is a dismissal without  
25 prejudice . . . . The 'without prejudice' condition permits a plaintiff  
26 to refile the complaint as if it had never been filed. A Rule 4(m)

dismissal does not, however, give the plaintiff a right to refile without the consequences of time defenses, such as the statute of limitations.). Given that Plaintiffs' new suit must also satisfy Washington's three-year statute of limitations (and it cannot), dismissal is appropriate.

### C. Sanctions

In addition to dismissal, Defendants ask the Court to 1) sanction Plaintiffs under Rule 11 because this action is "patently frivolous," and 2) impose a filing bar. (Ct. Rec. 45 at 9.)

With respect to Rule 11, the Court declines to award sanctions because Plaintiffs were likely unaware, given their *pro se* status, that their newly-filed action ran afoul of Washington's three-year statute of limitations. For the same reasons, the Court also declines to institute a filing bar because Plaintiffs' conduct, while causing Defendants to expend significant attorneys' fees, cannot be considered a "flagrant abuse of judicial process." *Molski v. Evergreen Dynasty*, 500 F.3d 1047, 1057 (9th Cir. 2007).

### III. Conclusion

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendants Brennen Milloy, City of Cle Elum, and its unidentified agents' Motion to Dismiss (Ct. Rec. [20](#)) is **GRANTED**;

2. Defendants Ronal Serpas, William Larson, Paul Woodside, David Snyder, David Standish, and John Koch's Motion to Dismiss (Ct. Rec. [24](#)) is **GRANTED**;

3. Defendants Kittitas County, Gene Dana, James Woody, Steve Panatonni, and Mark Rickey's Motion to Dismiss (Ct. Rec. [27](#)) is **GRANTED**;

1 4. Plaintiffs' Complaint (Ct. Rec. 5) is **DISMISSED with prejudice**  
2 and without leave to amend;

3 5. All pending hearing and trial dates are **stricken**;

4 6. All pending motions are **denied as moot**;

5 7. **Judgment** shall be entered in Defendants' favor; and

6 8. This file shall be **closed**.

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
8 this Order and to provide copies to Plaintiffs and counsel.

9 **DATED** this 3<sup>rd</sup> day of August 2009.

10  
11 S/ Edward F. Shea  
EDWARD F. SHEA  
12 United States District Judge

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